110 FERC ¶61,407
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Texas Gas Transmission, LLC   Docket No. RP00-426-021

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued March 31, 2005)

1. On March 1, 2005, Texas Gas Transmission, LLC (Texas Gas) filed certain tariff sheets,[1] setting forth the essential elements of a negotiated rate service agreement between Texas Gas and Atmos Energy Marketing, LLC (Atmos). Texas Gas requests that the revised tariff sheets become effective March 1, 2005, to correspond with the effective date of the agreement. Texas Gas requests that the Commission grant any waivers necessary to permit the tariff sheets to be effective March 1, 2005. The tariff sheets are accepted, to be effective, March 1, 2005, subject to Texas Gas filing revisions consistent with the discussion below.

Details of the Instant Filing

2. The referenced agreement reflects: (1) that service shall be rendered under an existing service agreement, Contract No. T021789, executed pursuant to a pro forma service agreement under Texas Gas' Rate Schedule FT; (2) that the term of service shall begin on March 1, 2005, and shall remain in effect until October 31, 2015; (3) that the receipt points and delivery points shall be those set forth on Original Sheet No. 53; (4) that the Negotiated Rate Agreement provides for a daily contract demand of 15,000 MMBtu and a primary delivery point of Lebanon-Dominion/Zone 4, Meter No. 1247; (5) that the Negotiated Rate Agreement establishes a daily demand rate of $0.17/MMBtu and a negotiated commodity rate equal to Texas Gas' maximum commodity rate, plus a commodity premium that varies by delivery point; and (6) that Atmos will provide the applicable fuel that varies from zone to zone.

[1] Original Sheet No. 53 and Sheet Nos. 54-55 to FERC Gas Tariff, Second Revised Volume No. 1.

3. Footnote 3 of proposed Original Tariff Sheet No. 53 describes one additional provision of the negotiated rate agreement which pertains to capacity release:

> To the extent AEM [Atmos] releases or assigns this FT contract, the replacement shipper and any succeeding shipper will pay the above negotiated demand and commodity rates, including the commodity premium, unless AEM agrees to pay the FT commodity premium as one of the conditions of its capacity release or assignment.

4. Texas Gas asserts that the underlying FT service agreement contains no material deviation from the form of service agreement in Texas Gas' tariff that goes beyond filling in the blank spaces or that affects the substantive rights of the parties in any way.

Public Notice, Interventions and Protests

5. Public notice of the filing was issued on March 8, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. The Western Tennessee Municipal Group[2]; Jackson Energy Authority; City of Jackson, Tennessee; and the Kentucky Cities[3] (jointly, the Municipal Group) protest the instant filing.

6. The Municipal Group asserts that the Commission may not approve Texas Gas' application until the pipeline files the subject agreement, as required by Texas Gas' tariff.

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[2] The Western Tennessee Municipal Group consists of the following customers of Texas Gas: City of Bells Gas & Water, Bells, Tennessee; Brownsville Utility Department, City of Brownsville, Tennessee; City of Covington Natural Gas Department, Covington, Tennessee; Crockett Public Utility District, Alamo, Tennessee; City of Dyersburg, Tennessee; First Utility District of Tipton County, Covington, Tennessee; City of Friendship, Tennessee; Gibson County Utility District, Trenton, Tennessee; Town of halls Gas System, Halls, Tennessee; Humboldt Gas Utility, Humboldt, Tennessee; Martin Gas Department, Martin, Tennessee; Town of Maury City, Tennessee; City of Munford, Tennessee; City of Ripley Natural Gas Department, Ripley, Tennessee.

[3] The Kentucky Cities are the Cities of Carrollton, Henderson and Murray, Kentucky, all of which are customers of Texas Gas.

The Municipal Group cites section 38.4 of the General Terms and Conditions (GT&C) of Texas Gas' tariff:

> Texas Gas and a Releasing Customer may, in conjunction with their agreement to a negotiated rate hereunder, agree upon payment obligations and credit mechanisms that vary from or are in addition to those set forth in section 25.6 of the General Terms and Conditions, *provided that such agreements are filed as nonconforming service agreements*. (Emphasis added by the Municipals.)

The Municipal Group asserts that, because of the special payment arrangement for released capacity proposed, under which the acquiring shippers may or may not have to pay the commodity premium, which premium is outside of the standard rate design, Texas Gas must comply with this section of its tariff and file the agreement.

7. The Municipal Group further argue that the Commission should disallow the capacity release provision of the subject agreement because it conflicts with an existing tariff provision and is unduly discriminatory.

8. The Municipal Group states that it interprets Texas Gas's summary of the capacity release provision of the negotiated rate agreement to mean that Atmos may release its capacity at its discounted reservation rate so that any replacement shipper may obtain the discount for deliveries to any point on the system. The Municipal Group protests that this is in direct conflict with section 31.3 of the GT&C which provides that a shipper "holding a discount at a specific point or points . . . may retain a discounted rate if it chooses to use an alternate point (whether through segmentation, capacity release or its own exercise of flexible receipt and delivery point rights) . . . if Texas Gas has granted a discount to a similarly situated transaction at the alternate point." (First Revised Sheet No. 278, Second Revised Volume No. 1) The Municipal Group contends that the tariff requires a shipper wishing to retain such a discount to submit a request each time it moves its delivery point so that Texas Gas may determine whether, in fact, it is providing a discount in another transaction at the alternate point, and whether the requesting shipper is similarly situated to the other transaction. The Municipal Group contends the tariff provision complies with the Commission's policy set for the in *El Paso Natural Gas Company*[4] and very recently re-established in *Williston Basin Interstate Pipeline Company*.[5]

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[4] 62 FERC ¶ 61,311 at 62,990-91 (1993).

[5] 110 FERC ¶ 61, 210 (2005).

Discussion

9. The Commission finds that the capacity release provision of the negotiated rate agreement described in footnote 3 of the proposed tariff is inconsistent with the Commission's regulations concerning the pricing of capacity release transactions. Footnote 3 provides for any shipper to whom Atmos releases its capacity to pay the same negotiated rate as Atmos. While the Commission permits a pipeline to enter into negotiated rate agreements with its primary shippers that are in excess of its recourse rate and for a different rate design, the Commission has not authorized shippers and pipelines to include in negotiated rate agreements provisions that change the terms and conditions in the pipeline's tariff governing capacity release . The Commission's policy concerning the pricing of capacity release is set forth in section 284.8 of our regulations. That section provides in part that:

> (e) The pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate) and offering to meet any other terms and conditions of the release. . . .
>
> (h)(1) . . . A release under this paragraph may not exceed the maximum rate.

10. In addition, the reservation and commodity portions of a replacement shipper's rate are determined through separate processes.[6] The reservation portion of the rate is generally determined through a competitive bidding process initiated by the releasing shipper.[7] While the releasing shipper is permitted to negotiate a prearranged reservation rate with a particular replacement shipper, if that prearranged deal is at less than the maximum reservation rate it must be posted for others to offer a higher price. The usage charge to be paid by the replacement shipper is, by contrast, a matter between the replacement shipper and the pipeline, and the releasing shipper cannot bind the pipeline through the competitive bidding process to accept any particular usage charge from the replacement shipper.[8]

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[6] *El Paso Natural Gas Co.,* 62 FERC ¶ 61,311 at 62,991 (1993).

[7] Releases of 31 days or less and prearranged deals of any length at the maximum rate need not be posted for bidding. 18 C.F.R. § 284.8(h)(1).

[8] *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333 (1992) at 62,292-62,294 and 62,309.

11. Footnote 3 of the proposed tariff sheet is inconsistent with these requirements. It permits Atmos to release its capacity to a replacement shipper at the negotiated reservation rate. The reservation rate under the negotiated agreement is $0.17/MMBtu while the maximum rate for transportation to Zone 4 under Texas Gas' tariff is $0.2994/MMBtu. Thus, it appears that Texas Gas' proposed tariff sheet would allow Atmos to pass its reservation rate discount on to a replacement shipper without posting capacity to give others a chance to offer a higher reservation rate in violation of section 284.8(e).[9]

12. The Commission finds that the Municipal Group's argument that the negotiated agreement violates the discount portability provision of section 31.3 of Texas Gas' tariff is not applicable. That tariff provision is not relevant to the rate paid by a replacement shipper. The provision is only relevant to whether Atmos can retain its negotiated rate after a replacement shipper uses an alternate point. Since the reservation rate paid by the replacement shipper is determined through the bidding or other process, no issue arises as to whether the replacement shipper is entitled to discounts being given at a particular point.[10]

13. The Commission will accept Texas Gas' tariff sheets, to be effective March 1, 2005, subject to Texas Gas filing, within 15 days of the date of this order, revised tariff sheets modifying footnote 3 and the underlying agreement to be consistent with the Commission's policies discussed above. In addition, because of the concerns expressed by the Municipal Group, Texas Gas is also directed to file the subject negotiated agreement with Atmos.

The Commission orders:

(A) Original Sheet No. 53 and Sheet Nos. 54-55 to Texas Gas' FERC Gas Tariff, Second Revised Volume No. 1 are accepted, to be effective March 1, 2005, subject to Texas Gas filing, within 15 days of the date of this order, the negotiated agreement with Atmos and revised tariff sheets consistent with the discussion above.

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[9] *El Paso Natural Gas Co.*, 62 FERC ¶ 61,311 at 62,999-5-6 (1993).

[10] *El Paso Natural Gas Co.*, 62 FERC ¶ 61,311 at 62,991 (1993).

(B) Waiver of the 30-day filing requirement in section 154.207 of the Commission's regulations is granted to permit Texas Gas' tariff sheets to go into effect March 1, 2005.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.